

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

(Filed: March 30, 2007)

DO NOT PUBLISH

PETER ANTHONY REALE,)	
)	
Petitioner,)	
)	
v.)	No. 07-0203V
)	Statute of Limitations; Dismissal
SECRETARY OF)	
HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	
)	

DECISION¹

On March 21, 2007, Peter Anthony Reale (Mr. Reale), submitted a letter to the United States Court of Federal Claims Clerk of Court. Mr. Reale declares, in part, that he wants “compensation” for his adopted, adult, disabled son, Raymond Reale (Raymond), “a victim of his or and his mother’s vaccine.” Letter, filed March 21, 2007, at 2.² Chief Special Master Gary J. Golkiewicz deemed the letter to be a petition for compensation under the National Vaccine Injury Compensation Program

¹ As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction “of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). Otherwise, “the entire decision” will be available to the public. *Id.*

² Mr. Reale requests also “More Information about Filing a Claim.” Letter, filed March 21, 2007, at 1. The clerk of court shall send to Mr. Reale a copy of GUIDELINES FOR PRACTICE UNDER THE NATIONAL VACCINE INJURY COMPENSATION PROGRAM; a copy of the Vaccine Rules; and a copy of the list of attorneys who have indicated an interest in representing petitioners in Program cases that the clerk of court maintains.

(Program).³ Chief Special Master Golkiewicz assigned the petition to this special master for further proceedings. *See* Notice of Assignment, filed March 21, 2007.

This special master has reviewed thoroughly Mr. Reale's letter. At the outset, this special master notes that the letter is not entirely comprehensible. However, the special master is able to conclude that Mr. Reale asserts that he and several relatives, including his sister, Dominica or Maime Reale; his brother, Carl Reale; his cousins, Anthony Petralia, Peter Petralia, Nickie Petralia and Jennie Petralia; and Raymond, suffered death or injuries from diphtheria vaccine. *See generally* Letter, filed March 21, 2007. Mr. Reale has not established that he possesses representational capacity to pursue any Program action on behalf of most of the people he mentions in his letter. *See, e.g.*, § 300aa-11(b)(1)(A); § 300aa-33(2). Regardless, it is clear to the special master that any vaccines that Mr. Reale refers to in his letter were administered long before October 1, 1988. For instance, Mr. Reale asserts that his sister, who "was born in October 1923," died "when she was 2½ years old" from "diphtheria vaccine." Letter, filed March 21, 2007, at 1. The information that Mr. Reale provides places the alleged administration of his sister's vaccine sometime in the mid-1920s. Likewise, Mr. Reale indicates that he "got this shot" contemporaneously with his sister. Letter, filed March 21, 2007, at 1. And, Mr. Reale relates Raymond's alleged vaccine injury to the period of Raymond's birth in 1961. *See* Letter, filed March 21, 2007, at 1.

The Program represents a waiver of sovereign immunity. *See, e.g., Markovich v. Secretary of HHS*, 477 F.3d 1353, 1360 (Fed. Cir. 2007), citing *Brice v. Secretary of HHS*, 240 F.3d 1367, 1370 (Fed. Cir. 2001). Therefore, this special master must construe "strictly and narrowly" Program provisions. *Markovich*, 477 F.3d at 1360. This special master must enforce Program provisions even when the result might appear "harsh." *Greider v. Secretary of HHS*, 23 Cl. Ct. 348, 351 (1991).

Section 300aa-16(a) provides:

In the case of--

(1) a vaccine set forth in the Vaccine Injury Table which is administered before October 1, 1988, if a vaccine-related injury or death occurred as a result of the administration of such vaccine, no petition may be filed for compensation under the Program for such injury of death after the expiration of 28 months after October 1, 1988. . . .

As this special master has explained, any vaccines that Mr. Reale refers to in his letter were administered long before October 1, 1988. The expiration of 28 months after October 1, 1988, occurred on February 1, 1991. Mr. Reale filed his letter on March 21, 2007. Thus, the applicable statute of limitations bars clearly any of Mr. Reale's cognizable Program claims. According to the

³ The statutory provisions governing the Vaccine Program are found in 42 U.S.C. §§ 300aa-10 *et seq.* For convenience, further reference will be to the relevant section of 42 U.S.C.

United States Court of Federal Claims, § 300aa-16(a)(1) is a statute of repose. *See Lombardo v. Secretary of HHS*, 34 Fed. Cl. 21 (1995); *Massard v. Secretary of HHS*, 25 Cl. Ct. 421 (1992); *Smith v. Secretary of HHS*, 26 Cl. Ct. 116 (1992). Therefore, the doctrine of equitable tolling does not apply. *See Lombardo v. Secretary of HHS*, 34 Fed. Cl. 21 (1995); *Massard v. Secretary of HHS*, 25 Cl. Ct. 421 (1992); *Smith v. Secretary of HHS*, 26 Cl. Ct. 116 (1992).

In the absence of a motion for review filed under RCFC Appendix B, the clerk of court shall enter judgment dismissing the petition.

The clerk of court shall send Mr. Reale's copy of this decision to Mr. Reale by overnight express delivery.

John F. Edwards
Special Master